

PCT



REC'D 27 JAN 2005

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

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Applicant's or agent's file reference 60285A		FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/US 03/0434	International filing date (day/month/year) 26.09.2003	Priority date (day/month/year) 02.10.2002	
International Patent Classification (IPC) or both national classification and IPC C08L23/04			
Applicant DOW GLOBAL TECHNOLOGIES INC.			
<p>1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.</p> <p>2. This REPORT consists of a total of 5 sheets, including this cover sheet.</p> <p><input checked="" type="checkbox"/> This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).</p> <p>These annexes consist of a total of 3 sheets.</p>			
<p>3. This report contains indications relating to the following items:</p> <ul style="list-style-type: none"> I <input checked="" type="checkbox"/> Basis of the opinion II <input type="checkbox"/> Priority III <input type="checkbox"/> Non-establishment of opinion with regard to novelty, inventive step and industrial applicability IV <input checked="" type="checkbox"/> Lack of unity of invention V <input checked="" type="checkbox"/> Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement VI <input type="checkbox"/> Certain documents cited VII <input type="checkbox"/> Certain defects in the international application VIII <input type="checkbox"/> Certain observations on the international application 			
Date of submission of the demand 30.04.2004		Date of completion of this report 27.01.2005	
Name and mailing address of the International preliminary examining authority:  European Patent Office - P.B. 5818 Patentlaan 2 NL-2280 HV Rijswijk - Pays Bas Tel. +31 70 340 - 2040 Tx: 31 651 epo nl Fax: +31 70 340 - 3016		Authorized Officer Droghetti, A Telephone No. +31 70 340-4143 	

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I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-40 as originally filed

Claims, Numbers

1-9 received on 19.04.2004 with letter of 05.04.2004

Drawings, Sheets

1/9-9/9 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
☐ the language of publication of the international application (under Rule 48.3(b)).
☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- ☐ contained in the international application in written form.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority in written form.
☐ furnished subsequently to this Authority in computer readable form.
☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- ☐ the description, pages:
☐ the claims, Nos.:
☐ the drawings, sheets:

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5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

IV. Lack of unity of invention

1. In response to the invitation to restrict or pay additional fees, the applicant has:
- ☒ restricted the claims.
 - ☐ paid additional fees.
 - ☐ paid additional fees under protest.
 - ☐ neither restricted nor paid additional fees.
2. ☐ This Authority found that the requirement of unity of invention is not complied with and chose, according to Rule 68.1, not to invite the applicant to restrict or pay additional fees.
3. This Authority considers that the requirement of unity of invention in accordance with Rules 13.1, 13.2 and 13.3 is
- ☐ complied with.
 - ☐ not complied with for the following reasons:
4. Consequently, the following parts of the international application were the subject of international preliminary examination in establishing this report:
- ☒ all parts.
 - ☐ the parts relating to claims Nos. .

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	
	No: Claims	1-9
Inventive step (IS)	Yes: Claims	
	No: Claims	1-9
Industrial applicability (IA)	Yes: Claims	1-9
	No: Claims	

2. Citations and explanations

see separate sheet

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Re Item V

Reference is made to the following documents:

D1: US 5278272 (cited by the applicant)
D2: WO A 98/46694
D3: US A 2002/0061981
D4: US B 6319979
D5: WO A 01/34719

1. The amended set of claims 1-9 filed with letter dated 05.04.2004 is allowable in view of Article 34(2)(b) PCT.

2.1. Although claims 1 and 7 have been drafted as separate independent claims, they appear to relate effectively to the same subject-matter and to differ from each other only with regard to the definition of the subject-matter for which protection is sought. The aforementioned claims therefore lack conciseness. Moreover, lack of clarity of the claims as a whole arises, since the plurality of independent claims makes it difficult, if not impossible, to determine the matter for which protection is sought, and places an undue burden on others seeking to establish the extent of the protection.

Hence, claims 1 and 9 do not meet the requirements of Article 6 PCT and should be rerafted as one single independent claim.

3. Novelty (Art. 33(2) PCT)

The subject-matter of claims 1-9 is not novel for the following reasons.

3.1. D1 discloses thermoplastic compositions comprising at least one further polymer (e.g. thermoplastic polyolefins as claimed) and an ethylene polymer as claimed (search report).

The homogeneously branched or substantially linear ethylene interpolymers disclosed in D1 are the same claimed in the present application.

The density of the ethylene polymers is the same and that the Brookfield viscosity can be supposed in the same range as claimed in view of the melt index mentioned in D1 (col. 4-5, lines 60-6).

Thus the subject-matter of claims 1-6 is not novel in view of D1.

3.2. D2 discloses a polymer composition comprising at least one homogeneous ethylene polymer as claimed (density and viscosity, search report) and a thermoplastic (e.g. olefin polymers, see search report).

In D2 two different homogeneous ethylene polymers can be present, differing for their density as claimed. Therefore the subject-matter of claims 1-9 is not novel in view of D2.

3.3. D3 discloses a polymer composition comprising a styrene block copolymer (e.g. SEBS) and an

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elastomeric ethylene polymer, having density and viscosity as claimed (in D3 col. 7-8, paragr. 72-76; search report).

The same homogenously branched ethylene copolymers useful as (b) (e.g. TAFMER or EXACT, page 8, lines 17-19) in the present application are mentioned in D3 (col. 9, paragr. 92).

Therefore the subject-matter of claims 1-6 is not novel in view of D3.

3.4. D4 and D5 disclose a polymer composition useful for hot melt adhesives, comprising a thermoplastic (e.g. a block styrene copolymer) and at least one ethylene homogenous copolymer having density and viscosity as claimed (search report).

In D4 in particular, the polymer composition presents good low temperature properties.

The same homogenously branched ethylene copolymers useful as (b) (e.g. TAFMER or EXACT, page 8, lines 17-19) in the present application are mentioned in D4 (search report).

Therefore the subject-matter of claims 1-9 is not novel in view of D4 and D5.

4. Inventive Step (Art. 33(3) PCT)

Being not novel the subject-matter of claims 1-9 cannot be regarded as inventive either.

5. The subject-matter of claims 1-9 meets the requirements of **Article 33(4) PCT**, with regard to **industrial applicability**.